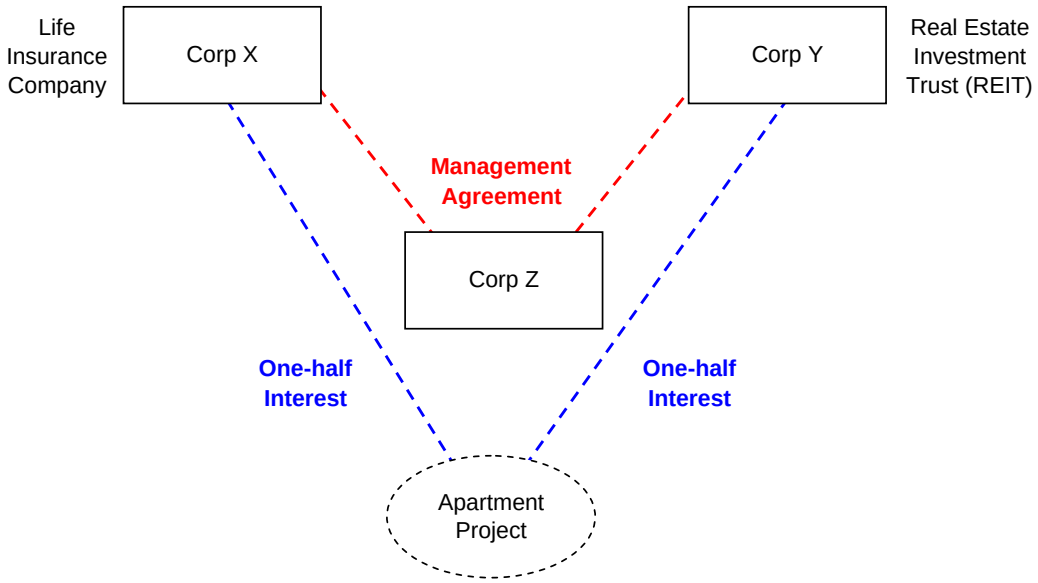
Revenue Ruling 75-374

Co-Ownership Not a Partnership With Only Customary Services For Maintenance & Repair

X, a life insurance company, and Y, a real estate investment trust, each own an undivided one-half interest in an apartment project. X and Y entered into a management agreement with Z, an unrelated corporation, and retained it to manage, operate, maintain, and service the project. Generally, under the management agreement Z negotiates and executes leases for apartment units in the project; collects rents and other payments from tenants; pays taxes, assessments, and insurance premiums payable with respect to the project; performs all other services customarily performed in connection with the maintenance and repair of an apartment project; and performs certain additional services for the tenants beyond those customarily associated with maintenance and repair. Z is responsible for determining the time and manner of performing its obligations under the agreement and for the supervision of all persons performing services in connection with the carrying out of such obligations.



Customary tenant services, such as heat, air conditioning, hot and cold water, unattended parking, normal repairs, trash removal, and cleaning of public areas are furnished at no additional charge above the basic rental payments. All costs incurred by Z in rendering these customary services are paid for by X and Y. As compensation for the customary services rendered by Z under the agreement, X and Y each pay Z a percentage of one-half of the gross rental receipts derived from the operation of the project. Additional services, such as attendant parking, cabanas, and gas, electricity, and other utilities are provided by Z to tenants for a separate charge. Z pays the costs incurred in providing the additional services, and retains the charges paid by tenants for its own use. These charges provide Z with adequate compensation for the rendition of these additional services.

Section 761(a) provides that the term "partnership" includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not a corporation or a trust or estate. Reg. 1.761-1(a) provides that mere co-ownership of property that is maintained, kept in repair, and rented or leased does not constitute a partnership. Tenants in common may be partners if they actively carry on a trade, business, financial operation, or venture and divide the profits thereof. For example, a partnership exists if co-owners of an apartment building lease space and in addition provide services to the occupants either directly or through an agent.

The furnishing of customary services in connection with the maintenance and repair of the apartment project will not render a co-ownership a partnership. However, the furnishing of additional services will render a co-ownership a partnership if the additional services are furnished directly by the co-owners or through their agent. In the instant case by reason of the contractual arrangement with Z, X and Y are not furnishing the additional services either directly or through an agent. Z is solely responsible for determining the time and manner of furnishing the services, bears all the expenses of providing these services, and retains for its own use all the income from these services. None of the profits arising from the rendition of these additional services are divided between X and Y. Accordingly, X and Y will be treated as co-owners and not as partners for purposes of section 761.